

REPUBLIC OF NAMIBIA



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case No: HC-MD-CIV-MOT-REV-2022/00457

In the matter between:

COLLEXIA PAYMENTS (PTY) LTD

APPLICANT

and

BANK OF NAMIBIA

FIRST RESPONDENT

TRUSTCO BANK NAMIBIA LIMITED

SECOND RESPONDENT

PAYMENTS ASSOCIATION OF NAMIBIA

THIRD RESPONDENT

Neutral citation: *Collexia Payments (Pty) Ltd v Bank of Namibia* (HC-MD-CIV-MOT-REV-2022/00457) [2022] NAHCMD 608 (07 November 2022)

Coram: RAKOW J

Heard: 14 October 2022

Delivered: 7 November 2022

Flynote: Urgency – Rule 73(4) – As soon as case is made out for urgent relief, rule 73(3) comes into play – Court may dispense with the forms and service provided

in these rules and dispose of the application in such manner and in accordance with such procedure as the court considers fair and appropriate.

Locus Standi – Procedural (rather than substantive) law allows court a greater measure of flexibility in determining whether, given the facts of the particular matter the substance of the right or interest involved and the relief being sought, *locus standi* has been established – Considerations such as that interest is “current”, “actual” and “adequate” vital in assessing whether a litigant has standing.

Summary: The applicant launched an urgent application which relief is twofold, one being urgent interim interdictory relief and the second being review relief.

The essence of the application is to stay the Bank of Namibia's envisioned liquidation application of Trustco Bank, because money which was never intended to be an asset of Trustco Bank will gratuitously become part and parcel of the insolvent estate thus prejudicing 35,000 (thirty-five thousand) to 40,000 (forty thousand) end-user clients.

Held – that although the Bank of Namibia has not yet brought their application to the High Court of Namibia for the liquidation of Trustco Bank, they took the said decision and such an application is eminent.

Held – that Collexia has an interest in the implementation of the administrative decision but it is limited to the specific performance of their obligation as a Payment Intermediation Service Provider and it does not give them a blanker right.

Held further – that court finds that the business of Collexia is entwined with the business of Trusco Bank.

ORDER

1. The applicant is granted leave to have the matter heard as one of urgency and the non-compliance with the rules and forms prescribed in the Rules of this Court as far as they relate to forms, time periods and service is dispensed with and as such condoned in terms of rule 73(4);

2. That all steps and actions, limited to any legal action, taken to implement the administrative decision by the first respondent of 5 September 2022, to apply to this Honourable Court for the winding up of second respondent in accordance with Section 58 (4) of the Banking Institutions Act, 2 of 1998 is temporarily stayed until 6 December 2022 to allow for the transition from Trustco Bank to First National Bank of the payment system of Collexia;
3. 60% of the cost of this application is awarded to the applicant, including the cost of one instructing and two instructed counsel.

JUDGMENT

RAKOW J

Introduction:

[1] The applicant in the matter before court is Collexia Payments (Pty) Ltd, a duly incorporated company in Namibia. The first respondent is the Bank of Namibia, the central bank of Namibia and a juristic entity established in terms of Section 2 of the Bank of Namibia Act, 1 of 2020. The second respondent is Trustco Bank Namibia Limited, a banking institution duly registered as such in terms of the provisions of the Banking Institutions Act, 2 of 1998 and incorporated in Namibia in terms of the Companies Act, 28 of 2004. The third respondent is the Payments Association of Namibia which is a voluntary association not for gain recognized by the Bank of Namibia as the Payment Management Body as contemplated in terms of the provisions of Section 2(2) of the Payment System Management Act of Namibia, 18 of 2003, further referred to in this judgement as PAN.

Colexia and Trustco Bank

[2] Colexia is a Payment Intermediation Service Provider (PISD). In essence it is running software that ensure electronic payments deducted from one account ends up paid into the correct account. Its electronic products provides for a front-end and

back-end system for merchants to initiate debit order instructions against their clients' bank accounts. As such, they are conducting their business in terms of section 3(6) (a) of the Payment System Management Act, 18 of 2003. Collexia has 37 merchant clients, being clients on whose behalf they request electronic payments from end users clients. They have approximately 35 000 end-user clients and does transactions valued between N\$20 000 000 and N\$30 000 000 per month.

[3] There are two categories of participants in the National Payment System being direct and indirect participants. A direct participant is a participant in the clearing or settlement system that clears or settles payment obligations on its own behalf whilst an indirect participant is a participant in the clearing or settlement system whose obligations are assured by a direct participant. In other words, an indirect participant needs a direct participant in order to fulfill its obligations to clear or settle transactions. Registered banking institutions are direct participants but in order for Collexia, who is an indirect participant to participate in the payment system, it needs a sponsoring bank, in the case of Collexia, this bank is Trustco Bank.

[4] Direct participants have an account with Bank of Namibia, the first respondent as it is a requirement to participate in the Inter-Bank Settlement System which allows for fast and efficient fund transfers between the participants. This system facilitate the payment where the end user client and the merchant client, in this case, are at two different participating institutions. This system has 9 participants, Bank of Namibia and 8 other commercial banks.

[5] Collexia entered into a written agreement with Trustco Bank on 30 April 2019 to become the direct participant of Collexia which in turn would allow them to participate in the system as a PISD. Collexia further applied to PAN for the renewal of their authorization to act as a PISD and as part of the application had to confirm that Trustco Bank is their direct participant in the settlement system. Collexia and Trustco Bank therefore share a commercial relationship.

Bank of Namibia and Trustco Bank

[6] Trustco Bank has been holding a banking license since 9 December 2016 and as such, is subject to the control, regulation and supervision of Bank of Namibia in

terms of the Banking Institutions Act, 2 of 1998. During this time, it seems that Bank of Namibia had serious concerns regarding the liquidity of Trustco Bank and on 28 September 2022 it issued a statement indicating that it has resolved to apply to the High Court of Namibia for the liquidation of Trustco Bank. This decision was taken in accordance with Section 58(4) of the Banking Institutions Act by Bank of Namibia's board of directors as they were of the view that Trustco Bank is commercially insolvent at that time. This has been an ongoing discussion between Bank of Namibia and Trustco Bank since 2020

[7] Collexia only learned of the decision of Bank of Namibia to apply for the winding-up of Trustco Bank on 3 October 2022. Trustco Bank has also approached the High Court under case number HC-MD-CIV-MOT-REV- 2022/00444 to review the decision of Bank of Namibia and to ask for additional relief regarding the constitutionality of section 58(4) of the Banking Institutions Act. This application is currently pending in the High Court

The impact of the Bank of Namibia's decision on Collexia

[8] On behalf of Collexia it was explained that the decision to apply for the winding-up of Trustco Bank by the Bank of Namibia will have a far reaching effect on the conducting of their business. It will have adverse consequences on all merchants that have debit orders from their end-user clients where funds land in their merchant accounts at the stage of *concursum creditorum* as they will not have access to their funds but will become concurrent creditors in the insolvent estate of Trustco Bank.

[9] Between 30 000 to 40 000 transactions will be at risk at that stage where money will be deducted from end-user accounts regarding their indebtedness to 37 Merchants, which will be frozen. The potential loss of income Collexia stands to suffer and the liabilities they might incur as a result is not possible to determine at this stage but too ghastly to contemplate. They further stand to suffer reputational damage as well.

[10] It will be possible for Collexia to move to another direct participant and as such they are in the process of production testing to move their business to First National Bank as a sponsoring bank but they still face numerous challenges before they can

go live on the First National Bank system. This testing will only be completed at the earliest end of November 2022. A premature exit from Trustco Bank and migration to First National Bank will force Collexia to proceed with assumed system risks which includes reconciliation discrepancies, loss of income due to incorrect allocation and then overall damage to the reputation of Collexia. On behalf of Collexia, the lengthy and difficult process of switching from one sponsoring bank to another was also set out.

[11] Under ideal circumstances this process can take up to six months but in arguments it was conceded that a delay of six weeks of the institution of the application by the Bank of Namibia against Trustco Bank will also assist them.

Collexia and Bank of Namibia engagements

[12] Upon learning of the media statement, Collexia requested a meeting with representatives of PAN as a consequence of the media statement. This meeting took place on 3 October 2022 during which they were informed that they will not be granted an audience unless they are provided with the specific clause in the Entry and Participation Criteria of PAN which is an internal document of PAN, which they could not do.

[13] The applicant further attempted to meet with the representatives of the Bank of Namibia regarding the interest of Collexia in their matter against Trustco Bank and although conducted in a friendly and open matter, the meeting also came to naught and the representatives of the Bank of Namibia was not amicable to the proposals from the applicant.

The relief sought

[14] The relief sought by the applicant is based on two parts, one being urgent interim interdictory relief and the second being review relief.

The Urgent Interim Interdictory relief was set out as follows:

'1.1 That the ordinary Rules relating to service and time periods be dispensed with and that the application be enrolled as an urgent application in terms of the provisions of Rule 73(3) of the Rules of the above Honourable Court, condoning the Applicants' non-

compliance with the forms, procedures, and manner for service provided for in terms of the Rules of the above Honourable Court;

1.2 That all steps and actions, including but not limited to any legal action, taken to implement the administrative decision by the First Respondent of 5 September 2022, to apply to this Honourable Court for the winding up of Second Respondent in accordance with Section 58 (4) of the Banking Institutions Act, 2 of 1998 (the "Administrative Decision") temporarily be stayed pending the outcome of the proceedings in Part B below and the final determination of the application under case number HC-MD-CIV-MOT-REV-2022/00444;

1.3 That the First Respondent, or such other party opposing the relief sought in terms of Part A of this application, be ordered to pay the Applicant's costs in respect of Part A of the application, such costs to include the cost of two instructing and two instructed legal practitioners; and

1.4 Further and/or alternative relief as the Honourable Court may deem fit;'

[15] The review relief in the B part of the application, was for the following:

'2.1 Calling upon the First Respondent to show cause why the decision of 5 September 2022, to apply to this Honourable Court for the winding up of the Second Respondent in accordance with Section 58 (4) of the Banking Institutions Act (the "Administrative Decision"), should not be reviewed and set aside;

2.2 That the First Respondent, or such other party opposing the relief sought in terms of Part B of this application, be ordered to pay the Applicant's costs in respect of Part B of the application, such to include the cost of two instructing and two instructed legal practitioners; and practitioners; and

2.3 Further and/or alternative relief as the Honourable Court may deem fit.'

Arguments

[16] On behalf of the applicant it was argued that PAN had an obligation to inform Bank of Namibia of Collexia's application to renew its authorization as PISD as well as the interest Collexia had in Trustco Bank and Bank of Namibia had to consider the interest in such proceedings and should have afforded them an opportunity to be heard.

[17] It was further argued that if this application is not successful, perhaps the most far-reaching and devastating consequences will be to the 35,000 (thirty-five thousand) to 40,000 (forty thousand) end-user clients. The effect thereof will be that

those payments, be it credit payments, insurance payments, or payments for other services, will not be honoured. The money will be deducted from those end-user client's bank accounts, but will not be paid over to their creditors and service providers. This in turn will have the downstream effect of payment default, additional interest charges, and a negative effect on the credit ratings of the end-user clients.

[18] The applicant stated that it is also true that Bank of Namibia may launch its intended liquidation application of Trustco Bank at any moment. At that very moment, money which was never intended to be an asset of Trustco Bank, will gratuitously become part and parcel of the insolvent estate by the design of the NPS. Even if those monies are not eventually distributed, for whatever reason, it will still entail in the interim that the end-user clients are out of pocket but their intended creditors and service providers are not paid.

[19] The first respondent mainly takes issue with the application due to the lack of *locus standi* of the applicant, the abuse of the urgency procedures and the lack of urgency in the applicant's application and the impropriety of the granting of the interm interdict and the applicant's failure to make out a case therefor. They argued in respect to *locus standi* that the relationship between Bank of Namibia and Trustco Bank does not bind any other party, including the applicant and the impact of the first respondent's decision to wind-up the second respondents does not have a direct impact on any of the Collexias constitutional and statutory rights, and this was also never pleaded. Because of this, Collexia also does not have any right in the subject matter of part B of its application.

[20] It was further argued that section 56 and 58 of the Banking Institutions Act, 2 of 1998 are clear in as much that it does not mandate *audi* to persons who are not a concerned banking institution. The financial interest of Collexia in Trustco Bank is merely a financial interest and as such too remote to establish *locus standi*. It was also argued that the application is not urgent

Urgency

[21] Rule 73(4) sets out the requirements for an application to be dealt with on an urgent basis. The applicant in an affidavit filed in support of an application under subrule (1), the applicant must set out explicitly –

- (a) the circumstances which he or she avers render the matter urgent; and
- (b) the reasons why he or she claims he or she could not be afforded substantial redress at a hearing in due course.

[22] The understanding is that both these averments must be contained in the affidavit of the applicant before a matter can be considered on an urgent basis. This is then also the bridge to cross before the merit of any application will be considered. The logical sequence will be that as soon as a case is made out for urgent relief, rule 73(3) comes into play, and the court may then dispense with the forms and service provided in these rules and dispose of the application in such manner and in accordance with such procedure as the court considers fair and appropriate.

[23] In the matter of *Beukes t/s a MC Bouers and Others v Luderitz Town Council and Others*¹ the court said the following regarding these requirements for urgency:

‘ It is my view that rule 6 (12) of the Rules of Court concerning urgent application must be applied cautiously and sparingly as it tends to violate the constitutionally guaranteed right to fair trial, particularly Article 12 (1) (a) and (e) of the Namibian Constitution. In my opinion, the essence of rule 6 (12) of the Rules is, therefore, that in the exercise of his or her discretion, it is only in a deserving case that a Judge may dispense with the forms and service provided in the Rules. In terms of rule 6 (12), as I see it, a deserving case is one where the applicant has succeeded – (1) in explicitly setting out the circumstances which the applicant asserts render the matter urgent and (2) in giving reasons why he or she claims he or she could not be afforded substantial redress at the hearing in due course. (Mweb Namibia (Pty) Ltd v Telecom Namibia Ltd Case No.: (P) A 91/2007 (Unreported) where the Court relies on a long line of cases, including the Namibian cases of Bergmann v Commercial Bank of Namibia Ltd 2001 NR 48; Salt and another v Smith 1990 NR 87.) Thus, in deciding whether the requirements in (1) and (2) of rule 6 (12) have been met, that is, whether it is a deserving case, it is extremely important for the Judge to bear in mind that the indulgence – and indulgence, it is – that the applicant is asking the Court to grant, if the Court

¹ *Beukes t/s a MC Bouers and Others v Luderitz Town Council and Others* (A 388/2009) [2009] NAHC 55 (03 March 2009).

grants it, would whittle away the respondent's right to fair trial guaranteed to him or her by the Namibian Constitution.'

[24] For purposes of deciding upon the issue of urgency, the court must assume that the applicant's case is a good one and the applicant has a right to the relief it seeks.²

[25] In this instance the court is satisfied that although Bank of Namibia has not yet brought their application to the High Court of Namibia for the liquidation of Trustco Bank, they took the said decision and such an application is eminent. From the time that Collexia learnt of Bank of Namibia's resolution to apply for the winding-up of Trustco on 3 October 2022 until this application was served on 6 October 2022, Collexia attended a meeting with PAN on 3 October 2022, and on 4 October 2022, Collexia attended a meeting with Bank of Namibia, in an attempt to explain the situation and avert the current crisis. Collexia therefore made attempts to engage with the Bank of Namibia and directly with PAN

[26] Collexia further set out the reasons why it is urgent in that a winding-up order will impact on between 30 000 – 40 000 transactions and they are not in a position to move their business to First National Bank at this instance. It is also clear that a huge number of people will be affected if their funds, paid over to the merchants, do not reach the merchants because it now became part of the assets of Trustco Bank which will be in the process of winding up. Eventually, they might get some of their money back but this will involve a process where they became creditors of Trustco Bank and file claims against the estate. How this will work is also not clear to me because Collexia only facilitate the payments, so they will not have to institute claims but the merchants holding bank accounts at Trustco Bank. Be that as it may, I am of the opinion that Collexia, will not be able to be afforded substantial redress at a hearing in due course. I will therefore deal with the matter as one of urgency.

² *Bandle Investments (Pty) Ltd v Registrar of Deeds and Others*, 2001 (2) SA 203 (SECLD), 213 E - I; *Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd* 1982 (3) SA 582 (W), 586 G, as accepted in *Shetu Trading CC v Chair of the Tender Board for Namibia* 2011 All Nam 171 (HC) at par [7]

Legal Considerations

Locus Standi

[27] In the matter of *Uffindell t/a Aloe Hunting Safaris v Government of Namibia and Others* (PA 141 of 2000) [2009] NAHC 51 (20 April 2009)³ Maritz J as he then was unpacked the requirement of *locus standi* when applying for an interdict. He explained the legal position as follows:

‘ Under common law, the question of standing (in the sense of an actionable interest) has always been regarded as an incidence of procedural law. The assessment of the concept as an aspect of procedural (rather than substantive) law allows the Court a greater measure of flexibility⁴ in determining whether, given the facts of the particular matter, the substance of the right or interest involved and the relief being sought, locus standi has been established. Moreover, although the nature of the interest to be shown for standing is captured in the clipped phrase “direct and substantial”, the scope and ambit thereof are not capable of exact delineation⁵ by rules of general application which are cast in stone.⁶ Whether a litigant’s interest in the subject matter of the litigation justifies engagement of the Court’s judicial powers, must be assessed with regard to the peculiar facts and circumstances of each case. What will generally not suffice, is apparent from the illuminating judgment of Botha AJ on the issue of *locus standi* in *Jacobs en 'n Ander v Waks en Andere*, 1992 (1) SA 521 (A) at 533J – 534C⁷: an interest which is abstract, academic, hypothetical or simply too remote⁸. Considerations such as that the interest is “current”, “actual” and “adequate” are vital in assessing whether a litigant has standing in the circumstances of a case.

³ *Uffindell t/a Aloe Hunting Safaris v Government of Namibia and Others* (PA 141 of 2000) [2009] NAHC 51 (20 April 2009).

⁴ Compare for example: *Roodepoort-Maraiburg Town Council v Eastern Properties (Prop) Ltd*, 1933 AD 87 at 103; *Ex parte Mouton and Another*, 1955 (4) SA 460 (A) at 463H.

⁵ *Financial Services Board and Another v De Wet NO and Others*, 2002 (3) SA 525 (C) at 579I-580A.

⁶ *Kolbatschenko v King NO and Another*, 2001 (4) SA 336 (C) at 346H.

⁷ Where he said: “In die algemeen beteken die vereiste van locus standi dat iemand wat aanspraak maak op regshulp 'n voldoende belang moet hê by die onderwerp van die geding om die hof te laat oordeel dat sy eis in behandeling geneem behoort te word. Dit is nie 'n tegniese begrip met vas omlynde grense nie. Die gebruiklikste manier waarop die vereiste beskryf word, is om te sê dat 'n eiser of applikant 'n direkte belang by die aangevraagde regshulp moet hê (dit moet nie te ver verwyderd wees nie); andersins word daar ook gesê, na gelang van die samehang van die feite, dat daar 'n werklike belang moet wees (nie abstrak of akademies nie), of dat dit 'n teenswoordige belang moet wees (nie hipoteties nie) ...”

⁸ C.f. *Geldenhuis and Neethling v Beuthin*, 1918 AD 426 at 441; *Ex parte Mouton and Another*, supra, at 464A-B.

These common law principles and the measure of flexibility they allow the Court is an important reference, but not the true criteria, for deciding standing when litigants claim that their fundamental rights and freedoms protected under the Constitution have been infringed, derogated from or diminished. Whilst it is accepted for purposes of this judgment on the basis of the *Dalrymple*-case⁹ that our law does not recognise standing on the basis of a citizen's action to vindicate the public interest, the Court has relaxed the common law criteria to establish standing in appropriate circumstances. It has done so where the liberty of another individual is involved¹⁰ (although it has been regarded as more of an exception to the rule) and (in Britain) when it is necessary *ex debito justitiae*¹¹ to curb an abuse of public power. But, it is especially within the context of the protection and promotion of human rights values after the new constitutional dispensation created on Independence, that a more purposive approach must be adopted to accord individuals and classes of individuals standing to enjoy the full benefit of their entrenched rights and to effectively maintain and enhance the values expressed therein.

Albeit in a different constitutional dispensation, this is also the approach which has been adopted by the majority of the Constitutional Court in South Africa. Under s. 7(4)(a) of the South African Constitution, a person referred to in paragraph (b) thereof is entitled to apply to a competent court of law for appropriate relief (which may include a declaration of rights) when "an infringement of or threat" to any fundamental right entrenched in the Constitution is alleged. In *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others*, 1996 (1) SA 984 (CC) at 1082G-H] Chaskalson P expressed the views he held on the approach to *locus standi* under the South African Constitution as follows at par [165]:

"Whilst it is important that this Court should not be required to deal with abstract or hypothetical issues, and should devote its scarce resources to issues that are properly before it, I can see no good reason for adopting a narrow approach to the issue of standing in constitutional cases. On the contrary, it is my view that we should rather adopt a broad approach to standing. This would be consistent with the mandate given to this Court to uphold the Constitution and would serve to ensure that constitutional rights enjoy the full measure of the protection to which they are entitled. . . '

[28] In the current matter the court finds that the business of Collexia is entwined with the business of Trusco Bank in that Collexia placed evidence before this court that it cannot simply walk away from their arrangement but needs to put certain

⁹ *Dalrymple and Others v Colonial Treasurer*, 1910 TS 372 at 390

¹⁰ *Wood and Others v Ondangwa Tribal Authority and Another*, 1975 (2) SA 294 (A).

¹¹ Discussed in Wade and Forsyth, *Administrative Law* (7th edition) at 696 – 718

systems in place, apply for approval from PAN for approval to use a new direct participant bank, being First National Bank, test the system, they install and see whether it in fact does what it is supposed to do. From my understanding, this would also involve the opening of new accounts by the merchants at the new bank. It is not as simple as to say today I take my system and move away, it seems to be quite a complex task which involves the development and/or change of electronic software to make it compatible to run on the electronic framework of the new bank. But because of this dependency relationship that Collexia has with Trustco Bank, I find that they indeed have an interest in whether Trustco Bank can provide them with the necessary support or not, and as such whether Trustco Bank can still operate as a bank or whether it is winded-up.

[29] This is however the only interest Collexia has, being that there is a platform at Trustco which they use to conduct their business. It is my opinion that Collexia has not sufficiently shown that it has any interest in the review of the administrative decision to approach the High Court to wind-up Trustco Bank. Their only interest is in the time they need to detangle their business from Trustco Bank and to contract with a new direct participant partner, being First National Bank. I therefore find that Collexia do have *locus standi*, but only as far as within the parameters discussed.

Interim relief

[30] The requisites for interim relief are well settled and were neatly summarised in *Hix Networking Technologies v System Publishers (Pty) Ltd*¹² as follows:

'The legal principles governing interim interdicts in this country are well known. They can be briefly restated. The requisites are:

- (a) a prima facie right,
- (b) a well-grounded apprehension of irreparable harm if the relief is not granted,
- (c) that the balance of convenience favours the granting of an interim interdict; and
- (d) that the applicant has no other satisfactory remedy.'

¹² *Hix Networking Technologies v System Publishers (Pty) Ltd* 1997 (1) SA 391 (A) ([1996] 4 All SA 675) at 398 – 399.

[31] In *Nakanyala v Inspector-General Namibia and Others*¹³ in addition to the above principles, it was said that '(t)o these must be added the fact that the remedy is a discretionary remedy and that the court has a wide discretion.'

[32] Collexia in their application deals with these principles and sets out the basis for alleging that they have a prima facie right as well as an apprehension of irreparable harm. Some of these were listed and dealt with earlier in this judgement. It further seems that the balance of convenience favours them as the possible impact that can befall them if Trustco Bank is winded-up identify an impact on 30 000 to 40 000 transactions and the money that is subsequently paid into the vendors accounts which will not be available to them. Because of the uniqueness of the business relationship between Collexia and Trustco Bank and then the third parties being the vendors and the end users, it is clear that there is no other remedy available that will allow for the same result then what the court intends to order in this matter.

Specific order applied for

[33] I now turn to the specific relief applied for. Under the urgent relief the party applied that all steps and actions, including but not limited to any legal action, taken to implement the administrative decision by the first respondent of 5 September 2022, to apply to this Honourable Court for the winding up of second respondent in accordance with Section 58 (4) of the Banking Institutions Act, 2 of 1998 (the "Administrative Decision") temporarily be stayed pending the outcome of the proceedings in Part B below and the final determination of the application under case number HC-MD-CIV-MOT-REV-2022/00444. The court agreed above that Collexia has an interest in the implementation of the administrative decision but that interest was limited to the specific performance of their obligation as a Payment Intermediation Service Provider. It cannot be said that that specific interest gives them the blanket right to become involved in all issues between Trustco Bank and the Bank of Namibia. I am therefore not satisfied that the order as prayed for can be granted and although I found that they are entitled to some relief, the relief prayed for is too wide and not merited.

¹³ *Nakanyala v Inspector-General Namibia and Others* 2012 (1) NR 200 (HC)

[34] Because of the relief the court is going to grant, the B part of the application will also not be appropriate. It reads as follows:

'2.1 Calling upon the First Respondent to show cause why the decision of 5 September 2022, to apply to this Honourable Court for the winding up of the Second Respondent in accordance with Section 58 (4) of the Banking Institutions Act (the "Administrative Decision"), should not be reviewed and set aside'

This is in any event relief sought by Trustco Bank in their matter against the Bank of Namibia and because of the reasons stated in this judgement, I am of the opinion that Collexia did not make out a case for *locus standi* in such an application, nor that they have a specific right to ask for such a review. At most, as stated above, they have a right to protect their commercial interest.

[35] In the result, I make the following order:

1. The applicant is granted leave to have the matter heard as one of urgency and the non-compliance with the rules and forms prescribed in the Rules of this Court as far as they relate to forms, time periods and service is dispensed with and as such condoned in terms of rule 73(4).
2. That all steps and actions, limited to any legal action, taken to implement the administrative decision by the first respondent of 5 September 2022, to apply to this Honourable Court for the winding up of second respondent in accordance with Section 58 (4) of the Banking Institutions Act, 2 of 1998 is temporarily stayed until 6 December 2022 to allow for the transition from Trustco Bank to First National Bank of the payment system of Collexia.
3. 60% of the cost of this application is awarded to the applicant, including the cost of one instructing and two instructed counsel.

E RAKOW
Judge

APPEARANCES:

Applicant: A Riversage (SC) (with him R. Lewies)
Instructed by Instructed by Cronjé Inc., Windhoek

Respondent: T Muhongo (with him GL Kasper)
Instructed by Murorua Kurtz Kasper Incorporated, Windhoek